

A STUDY OF  
CLAIM RESOLUTION STRUCTURED  
SETTLEMENT AGREEMENTS  
FINAL REPORT

JULY 5, 2016

MARCUS DILLENDER  
KEVIN HOLLENBECK  
ALLAN HUNT

SUBMITTED TO:

WASHINGTON STATE DEPARTMENT OF LABOR & INDUSTRIES  
7273 Linderson Way, SW  
Tumwater, WA 98501-5414

SUBMITTED BY:

W. E. UPJOHN INSTITUTE FOR EMPLOYMENT RESEARCH  
300 S. Westnedge Ave.  
Kalamazoo, MI 49007-4686



## Table of Contents

Purpose and Approach of the Study .....	1
Background Understanding of the CRSSAs .....	3
Perspectives of Injured Workers .....	6
The Initial Trauma.....	7
Sources of Information about CRSSAs.....	7
Motivation for Applying .....	7
The Application and Negotiation Processes.....	8
Settlements .....	10
Analyzing the Characteristics of Claimants Who Applied for and Who Received Settlements .....	10
Self-Insured Employers.....	18
Life after the Structured Settlement .....	18
Employment Outcomes .....	19
Employers’ Perspectives .....	22
Employers with Structured Settlements .....	23
Impact of CRSSAs on State Accident Fund.....	26
Employer Cost Impacts .....	28
Impact of Structured Settlements .....	29
Findings, Conclusions, and Recommendations.....	31
Findings.....	31
Conclusions .....	33
Recommendations .....	35

List of Tables

1 Means of Characteristics of Applications ..... 8

2 25th Percentile, Median, and 75th Percentile of Characteristics of Applications ..... 9

3 Age Distribution of Applicants, by Year ..... 11

4 Means of Characteristics of Eligible Claimants ..... 12

5 25th Percentile, Median, and 75th Percentile of Characteristics of Eligible  
Claimants ..... 12

6 Average Marginal Coefficients from Logit Model for Who Applies and Receives  
Structured Settlements ..... 14

7 Estimates from Linear Regression Models ..... 16

8 Characteristics of the Mail Survey Sample of Individuals with a Settlement,  
by Employment Status ..... 20

9 Characteristics of Part-time and Full-time Workers from Administrative Data ..... 21

10 Employer Industry Distribution ..... 24

11 Employer Size ..... 25

12 Employer Claim Count ..... 25

13 Employer Medical Treatment Costs ..... 26

14 Employer Assessed Premium Levels ..... 26

## Purpose and Approach of the Study

Claim resolution structured settlement agreements (CRSSAs) are a relatively new initiative within the workers’ compensation system in Washington, approved by the Washington legislature in 2011 (RCW 51.04.063). Additionally, under RCW 51.04.069 the legislature mandated a study of CRSSAs to give stakeholders an objective, third-party assessment of its early implementation. The legislative language calling for the proposed study is clear about its requirements: the study must evaluate the quality and effectiveness of settlements for state fund and self-insured claims, must provide information on the impact of the CRSSAs to state fund and to self-insured employers, and must evaluate the outcomes for workers.

The promulgation of workers’ compensation rules and regulations usually has to try to find a balance between the interests of employers and the interests of (injured) workers. According to Department of Labor & Industries (L&I) staff, the insertion of CRSSAs in a series of reforms to the workers’ compensation system in 2011 was no different. In general, the employer community would like the certainty of having claims permanently closed such as in a “compromise and release” system; however, workers and their representatives would prefer the option to reopen claims, so that future, unforeseen, medical expenses will be covered and indemnity payments, if any, will continue. The compromise that got enacted into law was that for claimants over the age of 55 (changed to age 53 on January 1, 2015 and to age 50 on January 1, 2016) with claims that have been allowed and matured to at least 180 days, a structured settlement could be negotiated that would end indemnity payments. However, future medical expenses related to the claimant’s injury would continue to be covered by the workers’ compensation system (L&I or self-insured employer). Note that employers and their attorneys who were interviewed by project staff indicated that they would like to see the elimination of the age restriction on eligibility.

In satisfying the legislative mandate for the study, much hinges on the definitions of quality and effectiveness and on their measurability. We have operationalized these concepts as follows:

Quality	Effectiveness
<ul style="list-style-type: none"> <li>• Results in positive outcomes for claimants</li> <li>• Perceived to be fair/equitable by claimants and employers                             <ul style="list-style-type: none"> <li>➢ Horizontally (i.e., equal treatment for equal circumstances)</li> <li>➢ vertically (i.e., other things equal, more need or more immediacy gets higher level of attention)</li> </ul> </li> <li>• Unbiased (non-skewed) participation behavior</li> <li>• Positive outcomes for employers</li> <li>• Minimal unintended consequences</li> </ul>	<ul style="list-style-type: none"> <li>• Outreach information is accurate and disseminated widely to potential applicants</li> <li>• Processing is timely</li> <li>• Reasonable administrative cost per claim</li> <li>• Wide employer awareness and perception that program reflects employer input</li> <li>• Benefits accrued exceed the costs of the program</li> </ul>

To accomplish the study, we have analyzed three sources of data. The first source of data is an extract of claims data from the L&I Data Warehouse. These data have been used to estimate models of structured settlement application and receipt, to tabulate measures of processing time and cost, and to examine the impact on employers. The data contain information on all individuals who received a settlement prior to December 31, 2015 **and** all other individuals who met the age and claim maturity eligibility criteria for a settlement before December 31, 2015.

Second, we have conducted a survey of claimants who applied for a settlement prior to December 31, 2015. The purpose of this survey is to collect variables that provide information about individuals' application motivation and process, as well as self-reported outcome variables, such as employment, consumption expenditures, and entrepreneurial activity.

The third type of information is qualitative data collected through in person interviews and focus groups. These data help us to gauge stakeholders' perceptions. The interviews and focus groups included claimants with state fund insured and self-insured employers. Furthermore, employers or their legal representatives were interviewed—again, some state fund and some self-insured employers. The main purposes of these interviews or focus groups was to gauge perceptions about the fairness/equity of the CRSSAs, to gain an understanding of the outreach efforts by L&I, and to learn the extent of employer input that is going into suggesting settlements to their injured workers.

The next section of the report describes the steps followed in the structured settlement process from outreach to potential eligible claimants to payment of the structured settlement. That section will be followed by a section that provides analyses of data concerning claimants. This includes the claimants' perceptions of the application and approval processes as well as information about outcomes after receiving the settlement. The fourth section of the report provides data and analyses of the impacts of structured settlements on employers. The final section provides a summary of key findings, conclusions, and recommendations.

## *Background Understanding of the CRSSAs*

The purpose of this section is to briefly present our understanding of the CRSSA processes and procedures as a background for the analyses of claimant and employer impacts in the ensuing two sections of the paper. In the workers' compensation arena, L&I is an insurer, and in that role, it essentially serves two customers: employers and injured workers. It is the insurer for most employers in the state, although a number of (mostly large) employers are self-insured. In its role as insurer, it manages all claim services for injured workers. For self-insured employers and workers, L&I establishes procedures based on Washington legislation and conducts limited monitoring of the self-insured employers and their third party administrative entities.

Essentially CRSSAs have been established by the legislature to be a win-win situation for both employers and injured claimants. From the insurance perspective, they limit indemnity payments and bring closure to claims (except for future medical expenses). For claimants, the settlements apparently exceed the perceived present value of future payments, and the settlements have value because they end the necessity of dealing with L&I or the self-insured employer, including avoiding unwanted vocational rehabilitation services.

The major steps in the settlement process for an L&I insured claimant are outreach to eligible claimants, application, negotiation and contract development, submission to the Board of Industrial Insurance Appeals (BIIA) for approval, revocation period, and payments.<sup>1</sup> We were told that for several months following the implementation of CRSSAs in 2011, L&I's outreach included letters sent out to eligible claimants from the structured settlement unit. In addition, L&I's website has information about CRSSAs and how to apply for them. Over time, CRSSAs have become institutionalized, and L&I staff (claim managers, vocational service specialists, claim consultants, pension adjudicators, and assistant attorneys general) as well as outside vocational counselors will notify appropriate claimants of their availability. As noted in the next section of the report, letters from L&I's Structured Settlement Unit are by far the largest sources of information for applicants. Interestingly, a number of individuals who received a settlement and who responded to our survey indicated that they learned of the CRSSAs from health care professionals.

An emphasis of the legislature when it passed CRSSAs was the requirement that the BIIA approval process must consider whether the settlement was in the "best interest of the individual" (RCW 51.04.063(2)(j)) for pro se workers. The legislation goes on to list a number of factors that the BIIA needs to consider to make that determination. This requirement has led to an application that collects a considerable amount of information on the claimants' household, income levels and sources, and assets and debts. The applications are submitted to the Structured Settlement Unit (SSU) of L&I, where they receive an initial review. We were

---

<sup>1</sup> Workers whose employer of record for the claim is self-insured are eligible for a CRSSA and may proceed on their own, but they generally already have an attorney on their claim who prepares the contract, secures signatures, and submits it to the BIIA. If approved, the payments are made by the employer or its third party administrator.

told that, not surprisingly, many applications, upon review, had to be redone because data was omitted or it was clear from the data supplied that questions were misinterpreted.

When completed applications have been received, L&I SSU analysts review them to determine if negotiations should proceed. There are approximately 5 to 6 times as many applications as settlements, and the data that are reported suggest that many times L&I is unable to enter into negotiations. We did not collect a great deal of information about how the screening is done, i.e., how it is decided to pursue negotiations with particular applicants; however, L&I told us that the following list represents a majority of the reasons why the department is unable to settle with some applicants:<sup>2</sup>

- Worker is not at or near maximum medical improvement so that levels of permanent impairment or work restrictions can be estimated (31%)
- Application withdrawn or settlement rejected (by any party) (23%)
- Worker's financial situation does not support settlement as being in their best interest (18%)
- Worker able to work or returned to work prior to application (13%)
- Worker didn't meet statutory criteria (6%)
- Other (9%)

The department indicated that although a particular settlement may not be an option at the time of the initial application, the department does consider settlement with the worker later if, for example, the worker's medical condition stabilizes. Again, we have no data on self-insured applications.

The Department of L&I further indicated that some screening criteria are required by statute or regulation and additional factors may be reviewed in the determination of whether to proceed with negotiations. These are as follows:

Criteria for unrepresented workers (RCW 51.04.063):

- Nature and extent of the injuries and disabilities of the worker
- Age and life expectancy of the injured worker
- Other benefits the injured worker is receiving or is entitled to receive and the effect a CRSSA might have on those benefits
- Marital or domestic partnership status of the injured worker

Additional criteria required by the BIIA (WAC 263-12-052):

- Conditions accepted and segregated in the claim
- Number of dependents, if any, the worker has

Additional factors L&I may consider:

- Employability
- Other claims, whether open or closed

---

<sup>2</sup> This information was provided by the department of L&I structured settlement program based on 503 applications received in 2015.



- Present and future sources of income

If L&I decides to pursue a settlement, the agency will notify the employer of record, who is a party to the CRSSA if their industrial insurance rates are affected by the claim costs. For state fund-insured employers, this can last up to 5 years from the date of injury. If the rates would not be affected by the CRSSA, then the employer is not a party to the settlement. As long as the employer, if contacted, is in agreement, or if the employer is not a party to the CRSSA, L&I negotiates terms and develops a draft contract. We were told that the Assistant Attorney General's office reviews the contracts for the SSU. Again we did not observe this process or learn a lot about it, but our interviews with staff members suggest that L&I takes seriously the idea of having the settlement in the best interest of the worker and does not try to "low ball" offers, but rather makes what it considers to be fair offers subject to the constraint of having the settlement result in some savings for the State Fund. The contracts presumably include the structure of the payments, the closing of the claim for time loss payments, the allowance of re-opening of the claim for medical expenses that might result from the workplace injury or occupational disease that spawned the claim, and the revocation period. The contract must be signed by L&I, the claimant, and the employer, if affected.<sup>3</sup>

As per legislative mandate, the contracts must be approved by an industrial appeals judge at the BIIA. We were told that in the first years of implementation, some contracts were denied, often due to minor errors in the contract. We were told that these errors were generally easily fixed, and the contracts were resubmitted for approval. We were also told that a number of contracts were rejected because the BIIA said it was not given enough information in the contracts of represented workers to tell whether the CRSSA was in the best interest of the worker. This subsided after the *Zimmerman* appeal, which established that the lawyer for a represented claimant determines the best interest of their client, not the BIIA.

After BIIA approval, there is a 30-day revocation period during which any of the parties may withdraw their consent. At the end of the 30-day period, the claim is closed (if that is part of the contract) and periodic payments begin. The payout period for the structured settlement occurs in a periodic schedule, and in all cases must include at least two payments.

- Initial payout plus a set amount of periodic payments—initial payment of up to 6 times the state's average monthly wage; subsequent payments on a monthly or bi-weekly basis that are at least 25% but no more than 150% of the state's average monthly wage

All in all, the CRSSA process involves many steps, and of course any party can opt out at any time. As noted in the first section, an indicator of effectiveness is the timeliness of the process. Indicators of quality are the extent to which the injured workers feel that they understood the process and their perception of how fair it was.

---

<sup>3</sup> In certain instances, such as occupational disease claims, multiple employers may be involved.

## *Perspectives of Injured Workers*

We rely on three sources of information to garner the perspectives of injured workers about their experiences in applying for and, if applicable, receiving structured settlements. The three sources of information are (1) qualitative data collected through focus groups, (2) survey responses, and (3) administrative data from the L&I data warehouse. The qualitative data come from focus groups with fourteen structured settlement recipients who were injured while working at state-fund employers and an interview with an injured worker from a self-insured employer. A representative from L&I set up these focus groups for the first week of February 2016 at sites in Seattle, Tacoma, Tumwater, and Vancouver.<sup>4</sup> We are reluctant to draw broad conclusions from such a narrow and selected sample. Instead, we relay some of the more notable experiences and observations and try to indicate how broadly shared each sentiment is throughout.

To supplement our analyses of qualitative data, we conducted a mail survey of CRSSA applicants.<sup>5</sup> Specifically, we developed a survey instrument that collected information in five general areas: knowledge about and motivation for applying for a structured settlement, experience with receiving a structured settlement, financial stability and recent expenditures, risk aversion and future expectations, and demographics. The survey was conducted anonymously. It was sent through the U.S. mail by L&I to half of the approximately 1960 individuals who have applied for a structured settlement through the end of 2015. Of the 983 individuals to whom the survey was sent, usable data was received from 102 respondents, and 54 surveys were returned with bad addresses. The response rate was thus  $102 / 927 = 11.1$  percent, which is approximately what might be expected from a mail survey.

As with the qualitative data, we are reluctant to generalize from the survey data, because the response was not random. Individuals with settlements were overrepresented as 56 of the responses (54.9 percent) came from individuals who had received settlements. Approximately 350 settlements have been reached since the initiative began, so if the response had been random with respect to the receipt of a settlement, only about 18 percent ( $175 / 950$ ) of the responses would have been from individuals who had received a settlement. Because of the unevenness of response, the statistics presented here will often disaggregate across the two sets of individuals, those who applied and those who received settlements.

The administrative data come from L&I's data warehouse. We received separate data files on basic claim information, vocational assessments, vocational rehabilitation, and structured settlement applications and outcomes. We merged all of these data sets using a

---

<sup>4</sup> At first, we were nervous about potential selectivity that might have resulted from the process that was used to set up the interviews because it was done by an L&I SSU staff member who might have only contacted individuals who had a good experience with the CRSSA process. Or it might have been the case that only individuals with a good experience would have agreed to participate. However, the candidness of the responses that we received when interviewing settlement recipients alleviated our concerns about this potential "cherry-picking." Nevertheless, it should be noted that focus group participants probably do not constitute a random sample and may not be representative of all structured settlement recipients.

<sup>5</sup> We gave respondents the option of replying to the survey online; however, we only received 7 responses that way, so we will refer to the survey as a mail survey in this document.

scrambled claim ID. As L&I collects very limited data on self-insured employers, our analyses of the administrative data pertains only to workers from employers insured through the state-fund.

## The Initial Trauma

All of the workers' paths to structured settlements began with injuries or occupational diseases. For some workers, catastrophic injuries left them with issues that they will have to navigate all of their lives. For others, repetitive stress injuries and years of physical labor had finally taken a toll. Regardless of the circumstances, almost all workers we spoke to in the focus groups told us that their bodies had given out. While several workers expressed the desire to work, a majority said their bodies would not let them.

## Sources of Information about CRSSAs

The mail survey asked respondents to list all of the sources of information from which they learned about structured settlements, and their opinion about how informed they felt. The most often mentioned sources of information were an L&I letter (approximately 45 percent of respondents) and the L&I claims manager (approximately 30 percent). The L&I website was mentioned by about 20 percent of the respondents. The other response categories that were offered: Employers, family members, friends, and coworkers were all mentioned less than 10 percent of the time. We also allowed respondents to provide an open-ended response to this item. Five respondents indicated that their vocational counselor had told them about it, and six individuals indicated that a health care provider had been the source.

Of the survey respondents who received a settlement, about half felt that they were "very" or "mostly" informed about the CRSSA process when they applied. Of the 47 respondents who answered the survey who applied but did not get a settlement, only about one-third felt that they were "very" or "mostly" informed about the CRSSA process when they applied. Of course, we're not quite sure of these responses since only 50 percent of the individuals who received a settlement answered true to the following prompt: "The Department of Labor and Industries will continue to pay my claim's medical bill even if I have a settlement." The other 50 percent said false or uncertain, which is in error.

## Motivation for Applying

After the initial trauma, all of the workers interacted with L&I, the self-insurer, or the self-insurer's third party administrator. Many of the people we talked to in focus groups found this to be a frustrating process and expressed a desire to be done dealing with the system as a reason for why they took a structured settlement. This corroborated a sentiment expressed during our initial meetings with L&I staff that structured settlement represents a chance for an amicable separation from L&I for workers dissatisfied with the workers' compensation system.

Another reason for considering a structured settlement that we heard repeatedly was that workers did not want to go through the retraining process. Several did not think they would get hired or could earn a reasonable wage after vocational rehabilitation, while others thought that they would physically be unable to do the new job. None expressed enthusiasm for learning a

new skill at age 55 or more. The majority of workers we spoke to questioned the sense in starting over on a new career path as they neared retirement.

Some workers chose to pursue structured settlements because they were uncomfortable with the uncertainty about what benefits they would otherwise receive, which suggests that structured settlements served to eliminate risk for many of the recipients. We were told by several workers that they felt that they would receive nothing if not for the structured settlement. While we did not get the impression that the structured settlement unit is responsible for this impression, it still worries us that some workers seem so pessimistic about their non-settlement options. This raises an important limitation in analyzing structured settlements and highlights a tough decision for the worker—it is impossible to know what the worker would have received if not for the structured settlements. Our conversations in the focus groups left us with the impression that some workers underestimate what they might have received in benefits from L&I.

Survey responses accorded with the sentiments we heard in focus groups about injured workers’ motivation for applying. Respondents were given eight categories for which they could choose as many as were applicable. About one-third of the respondents indicated that the following were their reasons, with almost no difference between those who got a settlement, and those who didn’t: “Resolve uncertainty about what I would receive for my injury,” “Did not want to go through training,” and “To no longer have to deal with workers’ compensation.” Not far behind those responses were “Provide bridge until Social Security” and “Wanted to work,” with one or both of these indicated by about 20 percent of respondents.

### The Application and Negotiation Processes

Table 1 includes information about structured settlement applications from the administrative data that we received. From 2012 through 2015, L&I received 1,225 applications for structured settlements from a total of 925 claimants.<sup>6</sup> L&I initiated 35 percent of the

**Table 1 Means of Characteristics of Applications**

Characteristic	Mean
% of applications where agreement is reached	19
% of applications rejected by department	42
% of applications that enter negotiations but do not settle	37
% of applications initiated by department	35
% with lawyer	18
Months from claim start to first application	47.6
Months from application to agreement	6.3
Months from application to rejection	0.6
Months from application to negotiations being terminated	0.6
Months from application to reaching board	4.6
Months from reaching board to agreement	1.7
Months from first application to agreement	9.6
Amount of structured settlement (\$)	96,207

NOTE: The data come from L&I’s data warehouse. The data contain information on the 1,225 structured settlement applications from eligible claims for state-fund employers from 2012 through 2015.

<sup>6</sup> All of the numbers in this report come from the data we received from L&I’s data warehouse. These numbers may differ slightly from L&I’s internal numbers.

applications, while workers initiated the other 65 percent of applications. The mean number of months from the claim start to the first application is 47.6 or nearly four years. It is worth noting that because of the backlog of appropriate claims at CRSSA start-up in 2012, this number would be biased upward.

About 19 percent of the applications (n = 230) resulted in structured settlement agreements, while 42 percent were rejected by the department. For 37 percent of applications, the worker and department entered into negotiations, but these negotiations were not successful. About 18 percent of applicants had a lawyer throughout the structured settlement process.

Table 2 displays the 25th, 50th, and 75th percentiles for several variables. The median time from claim start to the first application is 32.8 months. The mean number of months from application to agreement is 6.3 with 50 percent of agreements taking between 4.3 and 7.3 months to complete, which is consistent with the time spans we heard during the focus groups.<sup>7</sup> The mean time from claim start to the first application is over a year higher than the median because several applications are from very old claims, which affects the mean but not the median.

**Table 2 25th Percentile, Median, and 75th Percentile of Characteristics of Applications**

	25th Percentile	Median	75th Percentile
Months from claim start to first application	17.2	32.8	57.1
Months from application to agreement	4.3	5.8	7.3
Months from application to rejection	0.1	0.2	0.8
Months from application to negotiations being terminated	0.0	0.2	0.7
Months from application to reaching board	2.8	4.1	5.6
Months from reaching board to agreement	1.4	1.6	1.9
Months from first application to agreement	5.4	7.0	11.4
Amount of structured settlement (\$)	60,000	90,000	120,000

NOTE: The data come from L&I's data warehouse. The data contain information on the 1,225 structured settlement applications from eligible claims for state-fund employers from 2012 through 2015.

The department appears to reject applications quickly if it is not going to proceed with them. The 75th percentile of time from application to rejection is less than one month, while the mean time is 0.6 months. About 73 percent of the time (4.6 months on average) from application to agreement is consumed by negotiations and preparing the applications. The remaining 27 percent of the time (1.7 months on average) consists of the board reviewing and approving applications.

All of these length-of-time statistics for agreement measures describe time from the application to the agreement for the applications that were eventually settled. The second row from the bottom of Table 1 shows that the mean number of months from first application to agreement is 9.6. The 25th percentile time from first application to agreement is 5.4 months, the median is 7.0 months, and the 75th percentile is 11.4 months.

<sup>7</sup> The data suggest that processing times have gotten shorter each year. We do not show numbers separately by year because we are concerned about censoring. Censoring could occur because longer processing times from 2014 and 2015 will not show up in the data if they were not completed by the start of 2016. Thus, we would only have information on settlements with shorter processing times.

Although people in the focus groups voiced quibbles with the structured settlement process and offered suggestions for improvements, we were struck by how pleased people generally were with the process. Even workers who were frustrated with their overall experience with the system spoke highly of the services received from the structured settlement unit staff.

The modal length of time from the start of the structured settlement process to the agreement was six months, but it was apparent that L&I had a learning curve. People who settled earlier reported that they felt like they were learning about the process alongside L&I's structured settlement unit, while more recent structured settlement recipients reported that L&I had the process streamlined. The majority of people seemed to think the process was fair.

On the other hand, survey respondents seemed less favorable toward the process. The survey asked respondents to indicate their satisfaction with the settlement process using a Likert scale where 1 = Very satisfied, 2 = Satisfied, 3 = Neither, 4 = Dissatisfied, and 5 = Very dissatisfied. The mean for the individuals who received settlement was 2.86; and 19 individuals rated their satisfaction as either dissatisfied or very dissatisfied. A follow-up question asked the respondents about particular complaints they might have had. By far, the items that received the most responses were "Offer was too low" and "Process was too long."

## Settlements

The final rows of Tables 1 and 2 display statistics that describe the amount of the structured settlement, conditional on a structured settlement being reached. The mean amount is \$96,207, while the median is \$90,000. These numbers do not suggest that there are many outliers. Fifty percent of structured settlements were for between \$60,000 and \$120,000.

Though a few workers expressed that they would have liked a larger settlement, a majority of focus group participants seemed pleased with their outcomes. A few even shared that they received more than they expected. All expressed relief at being done with dealing with the system and happiness at receiving the settlement. One person reported crying tears of relief after the structured settlement was approved. Another said the settlement gave her the sense of validation she needed.

As alluded to above, a number of the individuals who answered the survey who received settlements complained that the offered settlement was too low. The survey asked these individuals to compare the size of the settlement to their expectations. About a third of the individuals responded that the settlement was "about what I expected." Another third responded that it was "lower than expected," and the last third was about equally split between "higher than expected" and "much lower than expected."

## Analyzing the Characteristics of Claimants Who Applied for and Who Received Settlements

During our interviews with employers (discussed in more detail later), many were eager to discuss the age limits for structured settlement eligibility. These employers were generally



pleased that the minimum age was lowered to 53 in 2015 and 50 in 2016, but they wanted even younger people to be eligible for settlements. Although we are agnostic about the age minimum, we show various age statistics over time for different samples to help better gauge the demand for structured settlements by age. Table 3 displays the mean, 25th percentile, median, and 75th percentile of applicants' age at the time of the first application by year. Panel A displays these statistics for denied applicants, Panel B shows these statistics for applicants not denied outright by the department, and Panel C displays the statistics for people who received structured settlements. It appears that the distribution is relatively similar for the first three years of the CRSSA initiative. In 2015, younger people did apply for and receive structured settlements after the age limit was lowered by two years, perhaps hinting at unmet demand from younger claimants.

**Table 3 Age Distribution of Applicants, by Year**

	Mean	25th percentile	Median	75th percentile
<b>Panel A: Age at first application for denied claimants</b>				
2012	60.6	58	60	63
2013	60.7	57	60	63
2014	61.0	58	61	63
2015	59.2	55	58	62
<b>Panel B: Age at first application for claimants not denied by the department</b>				
2012	60.7	58	61	63
2013	61.4	58	60	64
2014	61.4	58	61	64
2015	60.9	57	60	63
<b>Panel C: Age at first application for claimants who receive structured settlements</b>				
2012	62.0	59	61	64
2013	61.0	58	61	63
2014	61.4	58	61	64
2015	59.4	56	59	62

NOTE: The data come from L&I's data warehouse. The data contain information on the 1,231 structured settlement applications from eligible claims for state-fund employers from 2012 through 2015. In 2015, the minimum eligible age was lowered from 55 to 53.

Tables 4 and 5 consider characteristics of claimants. Column 1 of Table 4 displays characteristics of eligible claimants who did not apply for structured settlements, column 2 displays characteristics of claimants who applied but did not receive a structured settlement, and column 3 displays characteristics of people who eventually received a structured settlement. The data suggest that more costly and more severe claims are more likely to be settled. Not only is the pre-injury monthly wage higher for settled claims, average medical costs and the total paid-to-date amounts are higher as well. It is important to note that all of the data represent values as of the time the data were gathered, not necessarily at the time of the application. For example, workers could have received PPD payments before or after applying for structured settlements.

While these descriptive statistics are informative, they may miss or overstate underlying relationships among variables. For instance, is it really that a high number of Independent Medical Examinations (IMEs) are associated with applying for a structured settlement, or is it that people with severe injuries have more IMEs and are also more likely to file for structured

settlements? Regression analysis can help sort out these possibilities by allowing us to control for confounding factors. We estimate regression models of the following form:

$$y_i = \alpha + \beta Claim_i + \varepsilon_i ,$$

**Table 4 Means of Characteristics of Eligible Claimants**

	Eligible But Did not apply	Applied but did not settle	Settled claim
% Male	64	70	79
% Married	62	59	61
Pre-injury wage (\$)	3,529	3,640	4,386
Medical costs (\$)	17,215	46,903	53,026
Paid to date (\$)	40,403	142,164	271,829
% Received PPD	47	81	18
PPD amount (\$)	7,485	18,700	3,486
% with closed claims that have been reopened	8	13	17
% Assessed for vocational rehabilitation	20	84	97
% Declared Able to work	11	35	18
% Eligible for vocational rehabilitation	5	45	75
% Started vocational rehabilitation	5	44	49
% Completed plan 1 of vocational rehabilitation	3	16	41
% Received option 2 money	2	26	0
% with lawyer for the claim	12	29	41
% with 1 to 2 IMEs	40	59	55
% with 3 or more IMEs	8	28	25
% with 1 to 2 Protests	30	39	47
% with 3 or more protests	10	34	25
% with 1 to 2 appeals	11	23	26
% with 3 or more appeals	6	20	14
Observations	18,575	695	230

NOTE: The data come from L&I's data warehouse. The data contain information on the 19,500 eligible claims for state-fund employers from 2012 through 2015.

**Table 5 25th Percentile, Median, and 75th Percentile of Characteristics of Eligible Claimants**

	Did not apply			Applied but did not settle			Settled claim		
	25th Percentile	Median	75th Percentile	25th Percentile	Median	75th Percentile	25th Percentile	Median	75th Percentile
Pre-injury wage (\$)	2,112	3,411	4,752	2,100	3,442	4,633	2,833	4,282	5,775
Medical costs (\$)	3,296	8,601	21,104	21,442	37,505	60,500	27,991	43,696	69,463
Paid-to-date amount (\$)	5,104	15,992	44,101	64,154	112,439	184,409	175,416	253,035	345,720
PPD amount (\$)	5,713	11,427	19,458	9,552	17,108	29,287	7,319	16,243	28,567

NOTE: The data come from L&I's data warehouse. The data contain information on the 19,500 eligible claims for state-fund employers from 2012 through 2015.

where  $i$  indexes the individual,  $y$  represents the application decision or outcome,  $Claim$  is a vector of claim and claimant characteristics that includes demographic characteristics of the claimant, the log of the claimant's pre-injury wage, an indicator variable for whether or not the claimant received permanent partial disability (PPD), an indicator for whether or not the claim had been reopened, an indicator variable for whether or not the individual was assessed as being able to work, an indicator for the claimant being eligible for a vocational rehabilitation plan, an



indicator for having completed vocational rehabilitation option 1, an indicator for having received money for vocational rehabilitation's option 2, an indicator for having a lawyer, an indicator for having 1 to 2 IMEs, an indicator for having 3 or more IMEs, an indicator for having 1 to 2 protests, an indicator for having 3 or more protests, an indicator for having 1 to 2 appeals, and an indicator for having 3 or more appeals.

When estimating the equation with indicator variables as the dependent variables as in Table 6, we estimate logit models and display the average partial effects of the estimates.<sup>8</sup> A coefficient can be interpreted as showing how that variable is related to the dependent variable after accounting for all of the other variables in the *Claim* vector of characteristics.<sup>9</sup>

Table 6 displays the estimates from the equation for applying for and receiving a settlement. In column 1, the dependent variable is an indicator for applying for a structured settlement. In column 2, the dependent variable is an indicator for the department having initiated the application. In column 3, the dependent variable is associated with the worker initiating the application. In column 4, the dependent variable is an indicator variable equal to one if the worker received a structured settlement conditional on applying.

We discuss each variable in the *Claim* vector in turn for all four specifications. The analysis suggests that being male is associated with a 0.9 percentage point increase in the likelihood of applying for a structured settlement. This is not because the department is more likely to target men. Rather, men are more likely to initiate applications on their own. Marital status is uncorrelated with applying for a structured settlement after controlling for all of the other factors. Neither marital status nor being male is related to receiving a structured settlement conditional on applying for one.

People who earned a higher wage in the month before the injury are more likely to apply as are people with higher medical costs resulting from their injury. The coefficient on the log of the pre-injury wage is 0.007, which indicates that doubling the pre-injury wage is associated with a 0.7 percentage point increase in the likelihood of applying for a structured settlement. We do not detect a statistically significant correlation between having a higher pre-injury wage and receiving a structured settlement after controlling for confounding factors.

---

<sup>8</sup> The logit model is a regression model that is used to examine the relationship of a set of variables to an event with a binary outcome (e.g., applied versus did not apply). The name comes from an assumption that the error term has a standard logistic distribution.

<sup>9</sup> Our null hypothesis is that there is no relationship between each independent variable and the dependent variable, but our model generally produces a non-zero estimate. The asterisks in Tables 6 and 7 indicate how confident we are that the coefficient is not equal to zero. One asterisk means that there is a 90 to 95 percent chance that the independent variable is related to the dependent variable after controlling for other factors. Two asterisks indicate that there is 95 to 99 percent chance that the independent variable is related to the dependent variable after controlling for other factors. Three asterisks mean that there is over a 99 percent chance that the independent variable is related to the dependent variable after controlling for other factors. When we are less than 90 percent sure that a coefficient is different from zero, we do not put any asterisks next to the estimate. For these “statistically insignificant” variables, we say that we cannot reject the null hypothesis of no relationship between the independent variable and the dependent variable. While a coefficient could be statistically indistinguishable from zero because the independent variable is not meaningfully related to the dependent variable, the lack of significance could also arise if we do not have enough precision to identify the relationship.

**Table 6 Average Marginal Coefficients from Logit Model for Who Applies and Receives Structured Settlements**

	(1) Applied for structured settlement	(2) Department initiated Application	(3) Worker initiated application	(4) Received structured settlement
Male	0.009*** (0.003)	-0.001 (0.002)	0.009*** (0.003)	-0.003 (0.029)
Married	0.001 (0.003)	-0.001 (0.002)	0.002 (0.003)	0.005 (0.024)
Log of pre-injury wage	0.007*** (0.002)	0.003* (0.001)	0.004** (0.002)	0.039 (0.026)
Log of medical spending	0.029*** (0.002)	0.008*** (0.001)	0.022*** (0.002)	0.047*** (0.017)
Received PPD	-0.033*** (0.003)	-0.001 (0.002)	-0.031*** (0.003)	-0.334*** (0.018)
Claim reopened	-0.015*** (0.005)	-0.013*** (0.003)	-0.001 (0.004)	0.196*** (0.036)
Assessed as able to work	0.024*** (0.004)	0.009*** (0.002)	0.015*** (0.003)	-0.063** (0.025)
Eligible for vocational rehabilitation plan	0.068*** (0.006)	0.009** (0.004)	0.054*** (0.005)	0.197*** (0.030)
Returned to work	0.005 (0.007)	-0.002 (0.004)	0.003 (0.006)	-0.040 (0.050)
Completed option 1	-0.007 (0.007)	0.001 (0.004)	-0.005 (0.005)	-0.093*** (0.033)
Received option 2 money	0.021*** (0.007)	0.018*** (0.004)	0.004 (0.005)	
Had lawyer	-0.000 (0.004)	0.006*** (0.002)	-0.007** (0.003)	0.180*** (0.029)
Had 1 to 2 IMEs	0.020*** (0.004)	0.012*** (0.003)	0.011*** (0.004)	-0.052* (0.027)
Had 3 or more IMEs	0.012** (0.006)	0.014*** (0.004)	0.000 (0.005)	-0.090** (0.039)
Had 1 to 2 protests	0.011*** (0.004)	0.006** (0.003)	0.005* (0.003)	0.029 (0.026)
Had 3 or more protests	0.018*** (0.005)	0.010*** (0.003)	0.005 (0.004)	-0.066** (0.033)
Had 1 to 2 appeals	0.005 (0.004)	0.001 (0.002)	0.004 (0.003)	0.033 (0.029)
Had 3 or more appeals	-0.001 (0.005)	0.003 (0.003)	-0.003 (0.005)	-0.017 (0.040)
Sample	All eligible claimants	All eligible Claimants	All eligible claimants	All eligible applicants
R <sup>2</sup>	0.274	0.232	0.247	0.525
Observations	18,755	18,755	18,755	741

NOTE: \*, \*\*, and \*\*\* indicate significance at 10%, 5%, and 1%. In columns 1, 2, and 3, the sample includes all claims that were ever eligible for a structured settlement between 2012 and 2015 and have values for all of the variables in the model. In column 4, the sample includes the claims for which applications were filed to settle the claim that have values for all of the variables in the model. The table displays average marginal effects from logit models. Robust standard errors are in parentheses below the coefficient estimates.

A 100 percent higher medical cost is associated with being 2.9 percentage points more likely to apply for a structured settlement and a 4.7 percentage point increase in the likelihood of receiving a structured settlement conditional on applying. People who receive PPD are 3.3 percentage points less likely to apply for a structured settlement after controlling for the other

factors. Most of this decrease appears to come from workers initiating the application. However, receiving PPD is associated with a 33.4 percentage point fall in the likelihood of receiving a structured settlement. These results suggest that PPD benefits may be regarded as an alternative to structured settlements.

Having a claim that has been reopened is associated with a 1.5 percentage point decrease in the likelihood of applying for a structured settlement. This decrease appears to be coming from the department being less likely to initiate the application once it has been closed. Conditional on applying, people with reopened claims are 19.6 percent more likely to receive a structured settlement than those that do not.

People who are assessed as being able to work through vocational rehabilitation assessment are 2.4 percentage points more likely to apply for a structured settlement, while people determined to be eligible for a vocational rehabilitation plan (likely meaning retraining) are 6.8 percentage points more likely to apply for a structured settlement. People who are assessed as able to work are 6.3 percentage points less likely to receive a structured settlement conditional on applying, while people who are eligible for vocational rehabilitation are 19.7 percentage points more likely to receive a structured settlement conditional on applying. We do not find that having returned to work or completing a retraining plan (referred to as selecting Option 1) are associated with applying for a structured settlement after accounting for other factors. We find that choosing to receive a cash award equivalent to a defined period of time loss payments in lieu of going through a retraining plan (referred to as selecting Option 2) is associated with a 2.1 percentage point increase in applying for a structured settlement. This occurs despite the fact that nobody has received both Option 2 money and a structured settlement. As with PPD, these results suggest that some candidates for structured settlements end up receiving Option 2 money instead. Similarly, completing Option 1 is associated with a 9.3 percentage point decrease in receiving a structured settlement for those who apply. This result highlights that people do not go through vocational rehabilitation and then settle a claim.

The coefficient on having a lawyer is zero in the first column, positive in the second column, and negative in the third column. These results suggest that workers with lawyers are less likely to initiate structured settlements. Conditional on applying, though, having a lawyer increases the likelihood of receiving a structured settlement. Applicants with lawyers are 18 percentage points more likely to receive a structured settlement, perhaps because lawyers have a better understanding of which workers will benefit from the program and what settlements will be approved.<sup>10</sup>

Finally, the analysis indicates that workers with more complicated or contentious cases as measured by IMEs and protests are more likely to apply for structured settlements, with

---

<sup>10</sup> We should note that we use two different attorney variables for the analysis. The claim data have information about whether or not the worker was represented. We use that variable when examining the application decision. For all of those who apply for a structured settlement, the structured settlement data have a separate variable for representation, which is often but not always consistent with the attorney variable from the claim data set. For all outcomes conditional on applying or conditional on receiving a structured settlement, we use the attorney information from the structured settlement data.

much of this increase coming from L&I initiating applications. However, conditional on applying, people with more protests are less likely to receive a structured settlement.

In Table 7, we estimate models that describe the outcomes, conditional on receiving a structured settlement. In the first column, the dependent variable is the number of months the process took from first application until an agreement was reached. A concern with using the total elapsed time as a dependent variable is that the results may be sensitive to outliers.

**Table 7 Estimates from Linear Regression Models**

	(1) Months from first application to agreement	(2) Log(Months from first application to agreement)	(3) Amount of structured settlement (\$)	(4) Log(Amount of structured settlement)
Male	-0.438 (1.183)	-0.002 (0.097)	-5,039 (7,229)	-0.008 (0.071)
Married	0.298 (0.919)	0.029 (0.081)	14,998*** (5,561)	0.154** (0.061)
Log of pre-injury wage	0.548 (0.837)	0.071 (0.080)	34,525*** (6,373)	0.404*** (0.058)
Log of medical spending	1.088 (0.720)	0.074 (0.056)	20,761*** (3,788)	0.210*** (0.039)
Received PPD	0.060 (1.836)	-0.059 (0.141)	8,567 (10,102)	0.087 (0.096)
Claim reopened	-2.776* (1.634)	-0.187 (0.137)	-7,473 (10,242)	-0.041 (0.101)
Assessed as able to work	-2.296** (0.948)	-0.212** (0.088)	-8,133 (7,361)	-0.131* (0.073)
Eligible for vocational rehabilitation plan	-1.632 (1.300)	-0.200** (0.099)	-24,577*** (6,721)	-0.249*** (0.062)
Returned to work	6.473 (4.221)	0.484* (0.291)	-35,235*** (11,076)	-0.353* (0.184)
Completed option 1	-0.426 (0.996)	-0.041 (0.086)	-9,983* (5,766)	-0.172*** (0.064)
Had lawyer	1.373 (1.098)	0.116 (0.092)	13,946*** (5,340)	0.126** (0.062)
Had 1 to 2 IMEs	1.215 (1.110)	0.087 (0.104)	850 (6,053)	-0.026 (0.072)
Had 3 or more IMEs	2.873* (1.595)	0.288** (0.132)	3,422 (9,002)	0.002 (0.088)
Had 1 to 2 protests	-0.690 (1.214)	-0.062 (0.104)	15,207** (6,403)	0.158** (0.071)
Had 3 or more protests	-0.188 (1.514)	0.024 (0.134)	13,590* (7,665)	0.187** (0.087)
Had 1 to 2 appeals	0.525 (1.256)	0.057 (0.105)	-4,548 (7,233)	-0.030 (0.077)
Had 3 or more appeals	-3.855*** (1.348)	-0.426*** (0.118)	-7,940 (8,245)	-0.071 (0.089)
R <sup>2</sup>	0.130	0.153	0.393	0.425

NOTE: \*, \*\*, and \*\*\* indicate significance at 10%, 5%, and 1%. In columns 1, 2, and 3, the sample includes all 230 claims that received a structured settlement between 2012 and 2015. The table displays coefficients from linear regression models. Robust standard errors are in parentheses below the coefficient estimates.

Therefore, in column 2 we show results that use the natural logarithm of total elapsed time as the dependent variable. When processing time is the dependent variable, a coefficient can be interpreted as the change in the number of months of processing time from a one-unit increase in the independent variable. When the log of processing time is the dependent variable, a coefficient can be interpreted as the percent change in processing time from a one-unit increase in the independent variable.

Most of the coefficients in columns 1 and 2 are statistically insignificant, meaning we cannot be confident that they are different from zero. This statistical insignificance may occur because the estimates are noisy due to the small sample size or because most of these factors do not explain the length of the process. The results suggest that reopened claims and claims for people eligible for vocational rehabilitation may move through the system faster, but the results are only marginally significant. There is stronger evidence that the process is shorter for claimants with three or more appeals. People who return to work may have longer processing times, while there is stronger evidence that workers with at least three IMEs have longer processing times.

In column 3 of Table 7, the dependent variable is the total dollar amount of the structured settlement, while in column 4 the dependent variable is the log of the total dollar amount. The results suggest that married people's average structured settlements are 15.4 percent higher than those of unmarried people. Higher earners also receive higher structured settlement offers. Doubling the pre-injury wage increases the amount of the structured settlement by 40.4 percent. These results reflect the fact that higher earners and married people both have higher compensation rates since time loss payments depend on pre-injury wages as well as on marital status and the number of dependents.

Higher medical costs are also associated with increased structured settlement amounts, which could reflect the fact that claims with higher medical costs are likely more severe and may be more likely to continue to incur high expenses in the future. Doubling medical costs is associated with a 21.0 percent increase in the structured settlement amount. These results highlight the importance of the expected costs of the claims in the settlement decision and amount and suggest that L&I is willing to pay more to settle more costly claims, which is consistent with one of the goals of structured settlements being to lower costs for the state fund.

The coefficients on the ability-to-work variables (assessed as able to work, eligible for a vocational rehabilitation plan, having returned to work, and completing a retraining plan are all negative and statistically significant. People who have returning to work as a potential outcome are likely willing to take a lower settlement. The settlement amount that L&I is willing to pay likely falls also for people who can return to work, because they will likely cost L&I less in time loss benefits in the future.

Having a lawyer is associated with having a higher settlement amount. This relationship could reflect that people who feel they are entitled to a higher settlement amount hire a lawyer, that a lawyer is better at negotiating a structured settlement, or that workers will only accept higher settlements since they will receive less because of their lawyers' compensation. Given the differing opinions from the focus groups about the importance of an attorney, it is

interesting that having an attorney is associated with an increased structured settlement almost exactly equal to the attorney fee for structured settlements of 15 percent.

### Self-Insured Employers

As is true for all of our analyses, the focus groups provided very limited information about self-insured employers. Only one employee from a self-insured company agreed to speak with us. When asked why she thought we were having trouble recruiting injured workers from self-insured employers she replied “because they are afraid.” She alleges that self-insured firms do not receive enough oversight from L&I. It is interesting that she apparently felt this way even though she had representation by an attorney whom she praised. She was more eager to discuss her treatment prior to starting the structured settlement process than the process itself.

Four of the mail survey respondents who had received settlements indicated that they had worked for a self-insured employer. Two of the four were obviously quite unhappy. They both indicated that they were “Very Dissatisfied” with their structured settlement outcome and the structured settlement process. One of them responded to an open-ended prompt that they had “been forced to settle.” One of the other two respondents was apparently happy with his/her settlement. He/she responded with a “Very Satisfied” to the item asking for how satisfied they were with their settlement and with the settlement process. The fourth self-insured employer respondent was in between these two extremes—neither satisfied nor dissatisfied with the settlement or the settlement process.

### Life after the Structured Settlement

During our focus groups, a few individuals shared stories of moderate splurges with the structured settlement money, but these were not common. Several people stated that they used the structured settlement to help them catch up on bills that they had fallen behind on while dealing with their injuries. Others said they were saving their structured settlement money for retirement. While a few of the people we talked to had returned to work, most did not feel they were physically able to work.

Most people were still receiving their structured settlements, which made assessing financial stability after the settlements difficult. While some people expressed financial concerns in general, the majority seemed to be thinking of ways to make their structured settlement last and did not seem panicked about when the settlement payments would end. We found the lack of panic to be reassuring since as part of looking at the best interest, both L&I and the BIIA have conversations with unrepresented workers about their financial stability after the settlement money ends. With that being said, one person in particular was worried about what would happen after the money stopped coming.

The mail survey asked some questions about major expenditures, financial investments, and levels of savings after receiving a settlement. Twenty-one of the 56 (38 percent) individuals in the survey who had received a settlement reported that they had made large medical expenditures since. Fifteen (27 percent) had purchased an automobile; 7 had made home renovation expenditures; 6 had vacation expenses, and 5 had major appliance purchases. In the financial realm, 6 of the 56 had invested in stocks, mutual funds, or bonds; about half



reported that their savings today were greater than before the settlement (half reported that this was not true).

## Employment Outcomes

One of the focuses of the legislature in their mandate for this study is the extent of employment after settlements. We use two of our sources of information to attempt to address this issue. Unfortunately, both sets of data have shortcomings that constrain the analyses. The “bottom line” of our analyses is that at least 10 percent of individuals who received a settlement are employed, and most of the employment is on a part-time basis. From our survey of applicants, we found that about 17 percent self-reported that they were employed. So it is likely that 10 to 15 percent of CRSSA recipients are employed one year after receiving their settlement.

As noted above, one of the response categories in the mail survey about individuals’ motivations for applying for a settlement was “wanted to work.” Approximately 20 percent of the survey respondents who indicated that they had received settlements noted this reason as one of their motivators. In other words, there was some sense that continued receipt of indemnity benefits was getting in the way of productive employment on the part of some claimants.

The mail survey provides self-reported information about post-settlement labor force behavior. These data should be interpreted carefully because they are subject to the survey’s response bias. For example, some individuals may not have responded to the survey because they felt they were too busy or too tired after working. In any case, of the 56 individuals who responded to the mail survey and indicated that they had received a settlement, 53 provided information about their current labor force status. Two of the individuals were self-employed; seven were working for an employer—all of them part-time; 10 individuals indicated that they were not employed but were looking for work; and the remaining 34 individuals reported that they were either planning to look for work in the future or not planning to work at all. The employment rate for this sample of individuals is then 17 percent (9 out of 53). The unemployment rate is 52.6 percent (10 looking for work divided by 19 either looking or employed).

Table 8 provides frequency distributions about characteristics of this sample. The individuals who reported working are preponderantly male, over 60, and with some college as their highest level of education.

The second source of data about employment comes from the administrative data that were accessed from the L&I data warehouse. Claims records were matched to unemployment insurance wage record data by L&I staff persons. A very limited set of data were supplied to us. In particular, we have five indicator variables that have been set if earnings added over the first four quarters after a settlement are between \$0 and \$6,000; \$6,000 to \$12,000; \$12,000 to \$24,000; \$24,000 to \$48,000; or over \$48,000. If any of these indicator variables are set, then we have a sixth indicator variable that equals 1 indicating that the individual was employed at some time during the first four quarters after the quarter in which the individual reached a

**Table 8 Characteristics of the Mail Survey Sample of Individuals with a Settlement, by Employment Status**

Characteristic	Employed		Looking for work		Not in the Labor Force	
	(incl. self-employed)					
<b>Sex</b>						
Male	7	(77.8%)	5	(50.0%)	27	(79.4%)
Female	2	(22.2%)	5	(50.0%)	7	(20.6%)
<b>Marital Status</b>						
Married, partner present	6	(66.7%)	6	(60.0%)	26	(81.3%)
Not married	3	(33.3%)	4	(40.0%)	6	(18.7%)
<b>Age (current)</b>						
< 60	0	(0.0%)	3	(30.0%)	7	(20.6%)
60 – 65	4	(44.4%)	3	(30.0%)	17	(50.0%)
> 65	5	(55.6%)	4	(40.0%)	10	(29.4%)
<b>Education</b>						
HS grad or less	2	(22.2%)	2	(20.0%)	8	(23.5%)
Some college (incl. assoc. degree)	7	(77.8%)	8	(80.0%)	21	(61.8%)
Bachelors +	0	(0.0%)	0	(0.0%)	5	(14.7%)
Spouse working?	4	(44.4%)	2	(20.0%)	14	(41.2%)
<b>TOTAL</b>	<b>9</b>	<b>(100.0%)</b>	<b>10</b>	<b>(100.0%)</b>	<b>34</b>	<b>(100.0%)</b>

NOTE: Table entries are counts and column percentages. Percentages do not include missing values.

settlement. Note that due to lags in data availability, L&I only had wage record availability through the 3<sup>rd</sup> quarter of 2015. This implies that we only have a full four quarters of earnings if the date of the settlement occurred prior to the 4<sup>th</sup> quarter of 2014. However, the indicator for having some earnings, which we use as our measure of employment, will be set through the second quarter of 2015.

After eliminating duplicate claims, our administrative data has 224 records of individuals with state-fund workers’ compensation claims who received a settlement between January 1, 2012 and December 31, 2015. Twenty of these records (8.9 percent) have nonzero earnings over the four quarters following settlement. As was true with the mail survey data, most of these were males (17 of the 20); and most of them were married (15 of the 20). The age at settlement distribution of these employed individuals is fairly mixed: at settlement, 9 were under 60; 8 were 60 to 64; and 3 were 65 or older.

Most of the individuals (12) have earnings levels in the lowest category: \$0 to \$6,000 suggesting that most of the employment is part-time. The number of individuals in the other classes of earnings were 0, 2, 2, and 4 for the \$6,000–\$12,000; \$12,000–\$24,000; \$24,000–\$48,000, respectively.

To learn about the individuals who were working part-time, we examined the 16 records that had a settlement date prior to 2015. (The four records with settlements in 2015 that have earnings information are all in the \$0 to \$6,000 class, but it is not possible from these data to know if this is because of part-time employment or simply the truncation of wage record data to the 3<sup>rd</sup> quarter of 2015.) Half of these records have earnings between \$0 and \$6,000, and half have earnings over \$12,000. For purposes of this report, we will use the former as an indicator of part-time employment, and the latter as full-time.



Table 9 shows the distributions of the 16 cases for a number of characteristics. Interestingly, none of the part-time earners are over 65, and the size of the settlement seems to be inversely related to working part-time. But of course, the number of observations is extremely small, so one cannot generalize from these distributions.

**Table 9 Characteristics of Part-time and Full-time Workers from Administrative Data**

Characteristic	Part-time (\$0 < Earnings < \$6,000)		Full-time (Earnings > \$12,000)		Total	
	Sex					
Male	7	(87.5%)	8	(100.0%)	15	(93.8%)
Female	1	(12.5%)	0	(0.0%)	1	(6.3%)
Marital Status						
Married	5	(62.5%)	7	(87.5%)	12	(75.0%)
Not married	3	(37.5%)	1	(12.5%)	4	(25.0%)
Age at settlement						
< 60	4	(50.0%)	4	(50.0%)	8	(50.0%)
60 – 65	4	(50.0%)	3	(37.5%)	7	(43.8%)
> 65	0	(0.0%)	1	(12.5%)	1	(6.3%)
Size of settlement						
< \$50,000	1	(12.5%)	0	(0.0%)	1	(6.3%)
\$50 -- \$100,000	5	(62.5%)	1	(12.5%)	6	(37.5%)
\$100 - \$150,000	1	(12.5%)	2	(25.0%)	3	(18.8%)
> \$150,000	1	(12.5%)	5	(62.5%)	6	(37.5%)
<b>TOTAL</b>	<b>8</b>	<b>(100.0%)</b>	<b>8</b>	<b>(100.0%)</b>	<b>16</b>	<b>(100.0%)</b>

NOTE: Table entries are counts and column percentages.

## *Employers' Perspectives*

We conducted semi-structured interviews with 10 employers during our field work in Washington. Staff members from the Structured Settlement Unit were asked to contact employers who had experienced structured settlements to set up the appointments. All interviews were conducted over the phone between February 2 and February 5, 2016. As was the case with individual claimants who had received structured settlements, State Fund employers were much more likely than self-insured employers to agree to the interviews. Out of 10 employer representatives, one was a defense attorney who represented several employers, and three were self-insured employers. These three very large employers represent manufacturing, medical services, and a public entity. So there was considerable diversity among our few self-insured sources. The two private sector self-insured employers had experienced several structured settlements and the public entity had seen only one.

Our State Fund employers ranged from a small sheet metal firm to a large department of State Government. While they ranged from less than 100 employees to several thousand in employment, all but one of them had seen only 1 structured settlement at the time of our interviews. One temporary staffing firm had no structured settlements and was glad to hear about the program! Some of the employer contacts were familiar with settlement practices in other states and brought that knowledge to bear on their comments about structured settlements in Washington.

Employers generally felt that the structured settlement option in Washington was a very good addition to the program. A few complained about a lack of advance information. Other employers felt that this was a plus, because they did not have to be directly involved in negotiating the deal. Obvious advantages to the employer include the permanent closure of the claim for indemnity benefits, and the likelihood that there was a net savings in overall claim costs.

Nearly all employers reported that workers' compensation costs were a major burden, ranking 9 or 10 on a 10-point scale. None of the employers had any contact with the worker during the negotiation over the structured settlement, and contact after the settlement was very rare. So employers had no idea whether their worker(s) with a structured settlement had returned to work or not.

A good deal of frustration with the structured settlement process, mainly the BIIA review, was reported by attorneys and self-insured employers. This was especially true before the Zimmerman decision in 2014, which validated the role of the claimant's attorney in determining whether the settlement was "in the best interests of the employee." There were several stories offered about the early "pickiness" of the BIIA in reviewing draft structured settlement agreements.

For self-insured employers, we asked how the structured settlement option related to "side-bar agreements." These are agreements between the employer and the employee that develop while an appealed claim is being adjudicated at the BIIA. They develop out of the

negotiation process and are strictly voluntary. Such agreements have no legal standing and cannot be enforced like a contract. As a matter of policy, L&I does not enter into side-bar agreements because they are not provided for under the law, which is why this is a practice of self-insured employers only. The position of the self-insured employers we spoke with is that there is no conflict between the side-bar agreement and structured settlement options. First, because the side-bar is generally not used unless the claim has been appealed and is pending at the BIIA, and second because the structured settlement is final and will be enforced, while the side-bar agreement is not.

All employers felt that the age limitation was not needed, and just added an unnecessary restriction to the availability of structured settlements. When asked for policy recommendations, nearly all employer representatives recommended ending the age restriction. Several employers also indicated that they preferred dealing with an attorney, rather than directly with the worker. And they cited the lower level of attorney fees on structured settlements (at 15 percent) as possibly limiting the financial appeal to claimant attorneys and reducing the availability of structured settlements.

We received a number of suggested changes in policy and procedure with regard to structured settlements from employers. As indicated earlier, several employers had the perception that they should be involved sooner in the process, with a better flow of information. One attorney pointed out that there is a problem of timing when a structured settlement possibility arises during an appeal at the BIIA. A tentative agreement on the structured settlement will stay the appeal, but if the BIIA determines that the agreement is not in the workers' best interest the appeal goes forward. This does not allow sufficient time for the attorney to gather evidence and prepare for the presentation of the appeal. Another employer representative pointed out that with the amount of information that a worker has to submit to the BIIA to secure approval of a structured settlement, virtually all their cards are on the table and their negotiating position could be seriously undermined.

### Employers with Structured Settlements

This section will compare the distribution of State Fund employers with workers who received structured settlements to the distribution of State Fund employers who had workers that were eligible for settlements according to the requirements for eligibility (age of worker and duration of claim), but who did not pursue such settlements. So the comparison is between those employers with structured settlements (referred to as structured settlement employers) and those with eligible workers who did not have structured settlements (referred to as eligible employers) during the 2012–2015 period. This analysis will serve to indicate whether there is broad access to the structured settlement program across the Washington economy, or whether it has been confined to a narrow group of employers.

Table 10 shows the distribution of employers by industry for the sample of structured settlements and the broader eligible population.<sup>11</sup> Workers at firms in construction, real estate, and public administration appear to be more likely to secure structured settlements. While workers in agriculture, retail trade, food and accommodation, and other services seem less likely to receive such settlements. This may reflect the lower wage levels in these sectors. Despite these differences, it seems clear that structured settlements have been widely distributed during the first four years of the program since nearly all sectors of the economy are represented.

**Table 10 Employer Industry Distribution**

2-digit industry	Eligible employers		Structured settlement employers	
	Number	Percentage	Number	Percentage
Agriculture	677	6.8	4	1.9
Mining	33	0.3	0	0
Utilities	49	0.5	0	0
Construction	1,539	15.5	50	24.3
Manufacturing	932	9.4	20	9.7
Wholesale trade	676	6.8	13	6.3
Retail trade	1,062	10.7	17	8.3
Trans & warehouse	690	6.9	16	7.8
Information	78	0.8	2	1.0
Finance & insurance	107	1.1	1	0.5
Real estate	375	3.8	13	6.3
Professional services	305	3.1	4	1.9
Management	4	0.0	1	0.5
Administration	575	5.8	11	5.3
Education	158	1.6	4	1.9
Health care	943	9.5	20	9.7
Arts & entertainment	139	1.4	1	0.5
Food & accommodation	671	6.8	6	2.9
Other services	621	6.2	10	4.8
Public administration	308	3.1	13	6.3
<b>TOTAL</b>	<b>9,942</b>	<b>100.0</b>	<b>206</b>	<b>100.0</b>

Table 11 reports the distribution of structured settlements by the employment level of the firms where those injured workers were employed. It is clear that there are more structured settlements among larger firms. In fact, 11.5 percent of settlements involve employers of over 500 full-time equivalent employees whereas these employers make up only 2.9 percent of all eligibles. The full impact is obvious in the fact that the mean employee level among employers with settlements is 463 employees, while it is only 95 employees for all eligibles. But once again, the distribution is well populated indicating that a wide swath of workers and their employers have secured structured settlements to date.

<sup>11</sup> The smaller number of observations reflects the fact that some employers had multiple CRSSAs.

**Table 11 Employer Size**

FTE	Eligible employers		Structured settlement employers	
	Number	Percentage	Number	Percentage
Up to 10	2,507	30.2	42	26.8
10–25	1,542	18.6	19	12.1
25–50	1,310	15.8	16	10.2
50–100	1,203	14.5	21	13.4
100–500	1,490	18.0	41	26.1
> 500	239	2.9	18	11.5
TOTAL	8,291	100.0	157	100.0
Mean	95.4 ees		463.3 ees	
Standard deviation	511.7		2,763.0	

NOTE: FTE is defined as 1,920 hours. The reduced number of employers reflects missing data on this item.

This is also reflected in Table 12 which indicates the level of workers’ compensation claims activity per quarter for Washington State Fund employers. Again, the proportion of employers whose workers secured settlements is nearly twice as high for those with more than 10 claims. Interestingly, the proportion with zero claims per quarter is nearly identical for those employers with and without structured settlements. This indicates that employers with structured settlements are just as likely to have had a claim free quarter as other employers; but they have a lot more employees. Comparing the two distributions at their respective mean values shows that all eligible employers have about 17 employees per workers’ compensation claim per quarter while employers with structured settlements have about 14 employees per claim per quarter.

**Table 12 Employer Claim Count**

Number of claims per quarter	Eligible employers		Structured settlement employers	
	Number	Percentage	Number	Percentage
0	4,148	41.6	89	43.2
1–2	2,174	21.8	25	12.1
3–4	1,011	10.1	10	4.8
5–10	1,359	13.6	34	16.5
Over 10	1,279	12.8	48	23.3
TOTAL	9,971	100.0	206	100.0
Mean	5.6		32.6	
Standard deviation	35.0		224.0	

The difference shows up clearly in Table 13 also. Medical treatment costs for workers’ compensation claims are reported for all employers with eligible workers and for those with structured settlements. Note that there is a great dearth of structured settlement employers with total medical treatment costs below \$25,000. Over 60 percent of employers with structured settlements had aggregate medical costs over \$50,000 for their workers’ compensation claims. But once again, comparing the medical costs per claim shows that the average medical treatment cost per claim for structured settlement employers is \$6,034 while it is \$6,529 for all employers with eligible employees, nearly the same level.

**Table 13 Employer Medical Treatment Costs**

Medical treatment cost	Eligible employers		Structured settlement employers	
	Number	Percentage	Number	Percentage
< \$2,500	1,202	12.0	0	0.0
\$2,501–10,000	2,445	24.5	2	1.0
\$10,001–25,000	2,387	23.9	23	11.2
\$25,001–50,000	1,839	18.4	40	19.4
\$50,001–100,000	1,359	13.6	65	31.6
\$100,001–250,000	640	6.4	48	23.3
Over \$250,000	99	1.0	28	13.6
TOTAL	9,971	100.0	206	100.0
Mean		\$36,562		\$196,698
Standard deviation		100,191.1		550,387.5

Finally, the levels of the State Fund assessed employer quarterly premium for workers’ compensation coverage is compared in Table 14. The distribution of assessed premium reflects the elements already explored. The assessed premium level is much higher for employers with structured settlements due to their level of employment. In fact, 52.8 percent of structured settlement employers pay premiums of over \$100,000 per quarter, while 52.6 percent of eligible employers pay premiums of less than \$50,000 per quarter. The mean assessed premium level for eligible employers is \$135,890 per quarter, while it is \$756,074 for employers with structured settlements. But when standardizing for the level of full-time equivalent employment, structured settlement employers pay \$1,632 per worker and eligible employers without CRSSAs pay \$1,424 per worker.

**Table 14 Employer Assessed Premium Levels<sup>12</sup>**

Quarterly premium	Eligible employers		Structured settlement employers	
	Number	Percentage	Number	Percentage
Up to \$10,000	1,934	23.3	25	15.9
\$10,000–25,000	1,290	15.6	18	11.5
\$25,001–50,000	1,135	13.7	10	6.4
\$50,001–100,000	1,284	15.5	21	13.4
\$100,001–250,000	1,533	18.5	20	12.7
Over \$250,000	1,115	13.4	63	40.1
TOTAL	8,291	100.0	157	100.0
Mean		\$135,890		\$756,074
Standard deviation		422,853		2,196,621

Our conclusion is that there is no obvious bias in access to the structured settlement program. Employees of larger employers are more likely to secure a structured settlement. But workers for all kinds and all sizes of employers have been able to access the structured settlement process in the first four years of its existence.

### Impact of CRSSAs on State Accident Fund

The impact of structured settlements on the State Fund depends primarily on the comparison between the amount of the settlements and the future benefits that would have been paid without the settlements, less the cost of administering the system. Thus they will reflect the bargaining over the amount of the structured settlement between L&I and the injured workers.

<sup>12</sup>The reduced number of employers reflects missing data on this item.

Assuming consistent administration by L&I, the injured workers' time preference for money will largely determine the potential State Fund savings from CRSSAs. If injured workers have a marked preference for dollars today versus dollars in the future (discount rate), then the savings from CRSSAs will be larger. If this is not the case, then savings from CRSSAs will be smaller.

Casual observation suggests that discount rates of workers are relatively high, certainly much higher than current market interest rates. This is illustrated by the use of payday loans and other high interest rate transactions. In previous research with the New York workers' compensation system, Thomason and Burton estimated that the implicit discount rate for workers accepting lump-sum settlements in New York was about 24-25 percent.<sup>13</sup> That means that the typical injured worker who accepted a lump-sum settlement was willing to accept \$75 in a lump sum today in exchange for \$100 received in periodic payments over the next year. So there apparently is an opportunity for State Fund savings that actually increase the perceived well-being of injured workers who accept CRSSAs, provided they have a high personal discount rate. And the fact that application for such a settlement in the Washington system is entirely voluntary would seem to insure such a result.

In addition to the discount rate of injured workers, the vocational rehabilitation option also plays an important role in motivating structured settlements in Washington. In the worker focus groups conducted for this evaluation, the desire to avoid the necessity to retrain for a new career was an important reason for injured workers to pursue and/or accept a CRSSA. Very few workers of age 55 years or more believed it made sense for them to return to school to learn a new skill and embark on a second career. In the first place, they likely had significant continuing physical limitations or they would not have been on workers' compensation benefits at all. And the distaste for "starting over" among the injured workers we spoke to was nearly universal.

We investigated the possibility of using State Fund claim reserves as a way of estimating the likely future claim costs that would have been incurred in the absence of the structured settlement. However, we were told that the claim reserves were not kept up to date and would not accurately serve the purpose we intended. We estimated the duration of claims for CRSSA recipients using a statistical model based upon the characteristics of the individuals and their claims.<sup>14</sup> We used a matched sample technique to compare the durations of CRSSA claims with other claims that applied or were eligible to apply but did not receive settlements. None of these efforts resulted in significant insight into the future cost of claims at the time of the settlement. This appears to reflect the fact that L&I is carefully screening these claims and selecting those with greatest potential on the basis of characteristics that are not contained in the L&I data warehouse. A great deal of additional personal information is collected by the Structured Settlement Unit on the application for structured settlement, and these items were not available to us because of confidentiality restrictions. Without a way of accurately estimating the cost to

---

<sup>13</sup> Thomason, Terry and John F. Burton, Jr. 1993. "Economic Effects of Workers' Compensation in the United States: Private Insurance and the Administration of Compensation Claims," *Journal of Labor Economics* 11(1): S1-S37.

<sup>14</sup> This model was similar to those presented earlier on claimant characteristics but the outcome (dependent) variable was duration of the claim in months.



the State Fund of the alternative of “no CRSSA settlement” for these claims, we cannot determine the actual financial impact of such settlements on the State Fund.

## Employer Cost Impacts

In principle the impact of CRSSAs on self-insured employer costs would be similar to that of the State Fund. The cost of the settlement is known and the discount rate of the insured employer can be assumed to be relatively similar to that of the State Fund. The willingness of the worker to accept a settlement should be similar except for the possibility that a self-insured employer may be more aggressive in bargaining over the level of the CRSSA, which might affect the likelihood of the worker accepting the offer. Unfortunately, L&I does not receive data from self-insured employers in the data warehouse, so we were not able to access such data, nor estimate the impact of CRSSAs on self-insured employer costs.<sup>15</sup>

The cost impact for State Fund insured employers is much more complicated because it is determined not just by the level of the settlement and the cost of the alternative, but also by the actuarial insurance pricing mechanisms that are used in Washington and other workers’ compensation systems.

Workers’ compensation insurance premiums are derived from estimates of the amount of benefits that will be paid to claims arising in a given year. They are generally expressed in dollars per hundred dollars of payroll. However, in Washington an hourly measure of labor input is used, so premiums are expressed in dollars and cents per hour of employment.

All workers’ compensation programs develop rate class premiums for insurance coverage based upon actual performance of firms in similar businesses, generally for about 300 rate classes. So, for example, all retail clothing stores will be grouped together to determine the average cost of workers’ compensation benefits expected in a year. This figure will be added to the cost of program administration to derive a premium rate in dollars and cents per hour. All firms in the industry will use this base rate class premium as the starting point in figuring their cost of workers’ compensation insurance coverage.

Normally, all costs of the workers’ compensation system are included in the rate class premiums. In Washington this includes accident fund benefits, medical aid fund benefits, “Stay at Work” benefits and “Supplemental Pension Fund” benefits. The administrative costs of the system are also added to expected benefits to arrive at base rates by risk class.

Washington uses an experience rating system that modifies the rate class premium according to the firm’s specific performance in the past. Based upon three years of actual historical performance, each firm insured with the State Fund receives an experience modification factor which expresses the relationship of their expected losses to the average for the rate class group. These experience modification factors are simple ratios with the average experience rating being .91. Firms that have performed better than average in the past will have

---

<sup>15</sup> L&I collects the aggregate cost of claims from self-insured employers that do not differentiate between medical costs and indemnity. Thus, it is not possible to discern the size of the structured settlements.



experience modification factors less than 1.0 and firms that have performed worse than average in the past will have experience modification factors greater than 1.0. When the firm's experience modification factor is multiplied by the base premium for their rate class, the actual premium rate for workers' compensation insurance coverage in dollars and cents per hour is the result. When this is multiplied by the expected number of hours of work for a quarter or a year, the estimated cost of insurance emerges.

There are a number of exceptions and refinements to the system that are designed to prevent extreme variation in employer premiums from year to year. For instance, there is an annual "swing limit" of 25 percent that is applied to experience modification factors. This will prevent premiums from going up or down by more than 25 percent between years.<sup>16</sup> There is also a maximum claim value (\$283,507 in 2016) that prevents a single catastrophic loss from having too great an impact on an employer's cost of insurance. There is also a credibility factor that varies with the size of the firm. Larger firms have more predictability because of the larger numbers of employees involved; so their credibility is higher and their experience receives greater weight in the determination of experience modification factors. All these factors have the effect of shifting the cost of the claim from individual firms to the rate group as a whole.

When viewed from the individual firm perspective, the experience modification factor is the major influence on how their premium differs from other similar firms in the same line of business. It is also the main way that State Fund employers might reduce their workers' compensation costs. If they can improve their performance relative to the average in their industry, workers' compensation costs will go down with their experience modification factor.

## Impact of Structured Settlements

How does a structured settlement impact employer premiums through this State Fund experience rating system? It is obvious that a structured settlement will speed up the payment of benefits over what would have happened in the absence of the settlement. But how is the ultimate cost of benefits and future premium costs impacted? First, it is safe to assume that L&I will offer a lower settlement amount than the expected cost of future benefits for the claim. The goal of L&I is to reduce costs for the State Fund through CRSSAs. Assuming that the amount of the structured settlement is less than the anticipated future benefit costs, the result will be a reduction in premium for the employer. Let us turn to some illustrative examples.<sup>17</sup>

Suppose we look at a \$20,000 CRSSA paid on a claim against a firm in the 0514 rate class (garage door installation) with a relatively high base rate of \$4.017 per hour, with a date of injury that is within the 2016 experience period (2012-2014 date of injury), and that does not involve any extenuating circumstances like multiple employers, second injury fund relief, or third party recoveries. Assume that the claim has previously been paid \$110,000 in benefits at the time of settlement and anticipated future payments are \$35,000. The effect of the \$20,000 settlement is to reduce the overall claim cost from \$145,000 to \$130,000.

---

<sup>16</sup> However, where the "computed before limitation" experience factor is below 1.0 and the employer has an experience factor greater than 1.33 in the prior year, the factor is set to 1.00 which allows a change greater than 25 percent.

<sup>17</sup> Thanks to L&I Actuary Joshua Ligosky for developing these illustrations for us.

For a small firm in rate class 0514 with 10 full time equivalent (fte) employees (19,200 annual hours of employment) their experience modification factor would decline by 2.1 percent, or about \$.081 on the hourly premium rate. This would reduce their premium rate from \$4.017 per hour to \$3.936 per hour. For a larger firm with 50 ftes, the change in their experience modification factor would be just \$.030 per hour on the base premium, or less than 1 percent. The larger firm receives less relief because a greater proportion of the loss is credible in the actuarial model.

Larger settlements will have greater impacts, but the maximum claim cost and annual swing limits may come into play because of the higher dollar amounts. For the same small firm in class 5014 with a \$100,000 CRSSA and anticipated future claim payments of \$210,000, the experience modification factor would decline by 9.0 percent, or \$.341 per hour. The larger firm would see a decline of 3.6 percent or \$.136 per hour.

One more example, but with a \$200,000 settlement, illustrates the impact of the maximum claim cost (\$283,507 in 2016) which reduces the amount the individual employer is responsible for. Our small firm with a \$200,000 settlement, would see their premium fall by 2.8 percent, or \$.107 per hour. The larger firm would see a decline of just \$.043 per hour, or 1.1 percent.

It is worth noting that the bulk of the losses in this case would be absorbed by the rate class 0514 base, so all these employers could expect to see small increases in their rate class base premiums in the future to absorb these excess losses. Nevertheless, it is clear that reaching a structured settlement will benefit individual State Fund employers through small reductions in their premiums, so long as the amount of the settlement is less than the anticipated future benefit payments, not including medical aid because CRSSA recipients are still entitled to medical benefits, for that claim.

## Findings, Conclusions, and Recommendations

This section of the report will summarize the major findings from our analyses, attempt to tie those findings to conclusions about the quality and effectiveness of CRSSAs, and offer a few recommendations for L&I and/or the legislature to consider.

### Findings

- During the first four years of their implementation, the number of CRSSAs that have been approved has been modest. Our data indicate that State Fund settlements number about 230 over that time period totaling about \$22.5 million. On annual basis, that is fewer than 60 settlements that average about \$100,000 each; however, the number of State Fund settlements has grown every year, including in 2015 by 66% over the prior year. This study has no data on the number or sizes of settlements for claimants from self-insured employers.
- The number of applications for CRSSAs, on the other hand, far exceed the number of settlements. Our data indicate that over that same time period, about 1,225 applications for CRSSAs (about 5 times as many as approved settlements) from injured workers were received by the Structured Settlement Unit of L&I. There were 925 individual claimants involved in these applications which were drawn from an eligible population estimated at 19,500 injured workers who met the age and duration qualifications. In other words, about 4.7 percent of those eligible apply for CRSSA.<sup>18</sup>
- The department is unable to settle with about 40 percent of applicants before negotiation and 37% of the time after negotiations for various reasons, including the following:
  - Worker is not at or near maximum medical improvement so that levels of permanent impairment or work restrictions can be estimated (31%)
  - Application withdrawn or settlement rejected (by any party) (23%)
  - Worker's financial situation does not support settlement as being in their best interest (18%)
  - Worker able to work or returned to work prior to application (13%)
  - Worker didn't meet statutory criteria (6%)
  - Other (9%)

---

<sup>18</sup> The percentage of eligible claimants who apply for a settlement is relatively small because only about thirty percent of the 19,500 "eligible" injured workers (5,236 to be exact) had been receiving time loss payments for a substantial length of time (180 days or more). Of the 925 claimants who applied for a structured settlement, 89.9 percent had been receiving time loss payments for this length of time, and of the 230 settlements, all but three had time loss payments for this length of time. The 925 claimants who applied represent 18% of the workers receiving 180 or more days of time loss payments.

- CRSSAs seem to be “institutionalized” in the state. The SSU sends out letters monthly to all newly eligible workers (who are also receiving time loss benefits) advising them of the option to settle their claim. This may have been the only means of notification when the CRSSAs began to be offered; however we learned that more recently, referrals are being made by many sources. Injured workers are learning about settlements from their claim managers, from health care providers, vocational rehabilitation counselors, and from attorneys.
- Applicants reported feeling well-informed about the process when they applied. However, in response to our mail survey, half of the individuals who received a settlement were uncertain about whether the medical expenses for their claims would continue to be paid, and many of the individuals in the focus groups indicated that they were motivated to settle because they felt that otherwise their benefits were at risk. These facts suggest applicants may not have been as informed as they thought.
- Training avoidance seemed to be a major motivating factor for applying for a settlement. This was confirmed by the in person responses of individuals who had settled in focus groups and by the mail survey responses.
- The average and median time from L&I receiving an application to agreement is about 6 months.
- About one-fifth (18 percent) of applications were from claimants with representation; however, applicants with representation were more likely to settle. Forty-one percent of State Fund settlements were with claimants who were represented. Coincidentally our model (Table 6) also indicated that being represented increased the probability of securing a settlement given application by 18 percent.
- Regression estimates of models of who applies for a settlement suggest that the following characteristics about a claim are, other things equal, more highly correlated with CRSSA application: male, high pre-injury wages, greater medical expenses of the claim, assessed as able to work, eligible for a vocational rehabilitation plan, having one or more IMEs, and having one or more protests. The following characteristics are, other things equal, factors that indicate that the claimant is less likely to apply: received PPD and claim reopened.
- Regression estimates of models of who receives a settlement conditional on applying suggest that the following characteristics about the claim are, other things equal, more highly correlated with a settlement: higher medical expenses of the claim, having the claim reopened, eligible for a vocational rehabilitation plan, and representation by an attorney. The following characteristics are, other things equal, factors that indicate that the applicant is less likely to receive a settlement: received PPD benefits, assessed as able to work, having one or more IMEs, and having one or more protests.
- Approximately 10 to 15 percent of the individuals who received a settlement became employed in the year afterward. Most of this labor force participation was on a part-time basis.

- Employers generally felt that CRSSAs were a good option, although they would like to reduce or remove the age eligibility, and would prefer to be involved earlier in the process of settlement.
- In looking at distributions of employers whose injured workers have settled by industrial sector, employment size, and workers' compensation claim and premium experience, it is clear that employers from throughout these distributions are represented. However, larger employers with more claim experience, and in particular, higher medical treatment costs per claim, are disproportionately represented.
- Reaching a structured settlement benefits individual State Fund employers through small reductions in their premiums so long as the settlement amount is less than anticipated future payments for that claim. It benefits the State Fund as a whole to the extent that settlements are less than future claim costs plus administrative expenses.

## Conclusions

Our proposal offered several criteria to assess the quality and the effectiveness of CRSSAs. These are listed in the first section of this document. When queried about the applicability and thoroughness of these criteria, L&I administrators did not offer any suggestions for additions, deletions, or changes. We were furthermore told that there are no legislative background documents that might shed light on the legislative meanings of quality and effectiveness. Consequently, we rely on these previously listed criteria here.

## Quality Indicators

- Results in positive outcomes for claimants

In our focus groups, we noted that many of the individuals who had received settlements were quite satisfied with the amounts of the settlements. Respondents to the mail survey seemed slightly less positive, but we think it is fair to say that, for the most part, individuals who received State Fund settlements were satisfied. We had a very small number of interactions with self-insured claimants who settled, but among the four interactions, three were very unhappy about their settlements and the process.

In terms of outcomes, the mail survey respondents reported using the proceeds from their settlements for a number of major expenditures that they felt were needed. All of the data sources that we used showed a low rate of employment after settlement, and usually part-time.

- Perceived to be fair/equitable by claimants and employers – horizontally and vertically

Horizontal equity would be treating equally all claimants or employers? who had similar circumstances. Vertical equity would be providing larger settlements to

individuals who have more need or more dire circumstances. We were not able to explicitly test this criterion, but we did not receive any comments or evidence of either horizontal or vertical inequity.

- Unbiased (non-skewed) participation behavior

Our regression and cross tabular analyses showed a number of characteristics in which applicants differed from the general eligible population of claimants, individuals who settled differed from the applicant pool, the size of the settlement differed systematically, and employers with certain characteristics were disproportionately represented. However, we have no evidence that any systematic bias was introduced explicitly, and furthermore, the relatively small sample sizes of our analyses populations will naturally stray from randomness.

- Positive outcomes for employers

Analyses suggest that employers with injured workers who receive a settlement are likely to experience slight reductions in premium. Only a very small proportion of individuals with a settlement enter the labor force, so there is virtually no benefit in the way of an expanded available work force.

- Minimal unintended consequences

We uncovered no unintended consequences.

### Effectiveness Indicators

- Outreach information is accurate and disseminated widely to potential applicants

In the early months of implementation of CRSSAs, L&I aggressively disseminated information to potentially eligible claimants. The initiative is now fairly well understood and information about it is widely disseminated.

- Processing is timely

Although processing seems to have gotten faster over time, the mean and median time between application and agreement were both about 6 months suggesting that there were few outliers. We do not have an opinion about whether 6 months should be considered timely. There are arguments both ways.

- Reasonable administrative cost per claim

We did not collect administrative cost data.

- Wide employer awareness and perception that program reflects employer input

While we did not cast a wide net, it seemed as though there was considerable familiarity with the program among employers. We did receive some comments suggesting that employers would like information earlier in the process than when their signature is required on the contract.

- Benefits accrued exceed the costs of the program

The monetary benefits of the program would be reductions in total indemnity payments for claims. These reductions would be projected indemnity and rehabilitation payments minus the settlements. We were not able to project those payments, but we do know that total settlements were on the order of \$22.5 million. We did not collect administrative cost data.

## Recommendations

During the focus groups, we solicited suggestions about the structured settlement process from each worker. Although none of the suggestions achieved a consensus, the items on the following list seemed to resonate with several:

- One person did not like that the structured settlement went to the lawyer, who was then responsible for sending her a check. Instead, she thought it would be better if L&I sent one check to her and one to the lawyer. Another person expressed that he felt cut out of the process once he hired an attorney. He would have preferred for L&I to communicate with both him and the lawyer.
- One worker stated that he needed more time to make a decision but that L&I required a decision immediately. He would have liked more time to decide about taking the structured settlement after negotiations.
- A few people mentioned that they had different claim managers throughout the process. They felt continuity would have made the process easier for them.
- Two people said L&I should make the process easier for people without computers, especially given that this program is intended for older people.
- Several people commented that going before a judge was intimidating and expressed that they felt uncomfortable with all of the information they had to share. A related complaint was that the administrative burden was high.
- A few workers thought speaking with other people who had gone through the structured settlement process would have been helpful. They suggested that L&I could connect structured settlement recipients with people who were starting the process.
- Two workers mentioned that they would like L&I to clarify under what circumstances medical claims can be reopened.

As noted earlier in this report, the employers that we engaged during the study had two recommendations:



- Reduce or remove the age eligibility restriction
- Involve employers earlier in the settlement process.

From our study team's perspective, we have the following suggestions or questions about program operations:

- Might it be possible to improve the clarity and thoroughness of the information about the CRSSA process that gets provided to individuals who are interested in applying? Mail survey respondents had uncertainty about a very basic tenet of the program—continuing medical costs associated with the claim would be covered, and focus group participants expressed uncertainty about what benefits would be available if they didn't settle.
- Is all of the information requested on the application necessary? The application is quite burdensome, and it seems to us that if the information is carefully and thoroughly explained to claimants, they should be able to determine what is in their own best interest.

From our study team's perspective, we have the following suggestions about future studies of CRSSAs:

- If the legislature requires information about self-insured employers and claimants, then some mechanism for accessing appropriate data needs to be instituted.
- Systematic analyses of why the largest share of applications is denied should be undertaken.
- Future studies should collect administrative cost data.
- If post-settlement employment continues to be a topic of interest, then more information from wage record data needs to be made available.
- Continue and possibly expand the use of focus groups and employer interviews. In addition to providing us with context and allowing us to hear the stories behind the numbers, we believe the focus groups provided us with the following:
  - testable hypotheses
  - better understanding of attitudes and behavior
  - corroboration of information gleaned from other sources of data
  - information that we might not have known to ask about

In conclusion, we hope that these recommendations will be of use to the Department of L&I and to the legislature as they continually attempt to improve the functioning of this program option.